

1 Amanda C. Sommerfeld (State Bar No. 185052)
2 asommerfeld@jonesday.com
3 Donna C. Saadati-Soto (State Bar No. 333870)
4 dsaadatisoto@jonesday.com
5 JONES DAY
6 555 South Flower Street, 50th Floor
7 Los Angeles, CA 90017
8 Telephone: (213) 489-3939
9 Facsimile: (213) 243-2539

10 Aileen H. Kim (State Bar No. 324522)
11 aileenkim@jonesday.com
12 JONES DAY
13 3161 Michelson Drive, Suite 800
14 Irvine, CA 92612
15 Telephone: (949) 851-3939
16 Facsimile: (949) 553-7539

17 Attorneys for DEFENDANTS
18 SIRIUS XM RADIO INC. and PANDORA
19 MEDIA, LLC

20 *Additional Counsel on Next Page*

21
22
23
24
25
26
27
28
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

JESSICA POTTS, an individual,

Plaintiff,

v.

SIRIUS XM RADIO INC., a Delaware
Corporation; PANDORA MEDIA, LLC,
a Delaware Limited Liability Company;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 2:22-cv-08907 DMG (KSx)

Hon. District Judge Dolly M. Gee
Hon. Magistrate Judge Karen L.
Stevenson

**STIPULATED PROTECTIVE
ORDER**

Complaint Filed: September 26, 2022
Action Removed: December 8, 2022

1 Daniel B. Swerdlin (State Bar No. 243452)
2 daniel@allbridgeslegal.com
3 ALL BRIDGES LEGAL, P.C.
4 1388 Haight Street #58
5 San Francisco, CA 94117
6 Telephone: (415) 235-1751
7 Facsimile: (415) 551-1220

8 Attorneys for PLAINTIFF JESSICA POTTS
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Counsel for Plaintiff Jessica Potts (“Plaintiff”) and Defendants Sirius XM
2 Radio Inc. and Pandora Media, LLC (“Defendants”), by and through their respective
3 counsel of record, stipulate as follows:

4 1. A. PURPOSES AND LIMITATIONS

5 Discovery in this Action is likely to involve production of confidential,
6 proprietary, or private information for which special protection from public
7 disclosure and from use for any purpose other than prosecuting this litigation may be
8 warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter
9 the following Stipulated Protective Order. The Parties acknowledge that this Order
10 does not confer blanket protections on all disclosures or responses to discovery and
11 that the protection it affords from public disclosure and use extends only to the
12 limited information or items that are entitled to confidential treatment under the
13 applicable legal principles. The Parties further acknowledge, as set forth in Section
14 12.3, below, that this Stipulated Protective Order does not entitle them to file
15 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
16 that must be followed and the standards that will be applied when a Party seeks
17 permission from the court to file material under seal.

18 B. GOOD CAUSE STATEMENT

19 This Action is likely to involve personal and private or commercial, financial,
20 technical and/or proprietary information for which special protection from public
21 disclosure and from use for any purpose other than prosecution of this Action is
22 warranted. Such confidential and proprietary materials and information consist of,
23 among other things, confidential business or financial information, information
24 regarding confidential business practices, or other confidential research,
25 development, or commercial information (including information implicating privacy
26 rights of third parties), personally identifying information and other confidential
27 information regarding current or former employees of Defendants, and information
28 otherwise generally unavailable to the public or that may be privileged or otherwise

protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the Parties are entitled to keep confidential, to ensure that the Parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the Parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: this pending federal lawsuit, *Potts v. Sirius XM Radio Inc. et al.*, Case No. 2:22-cv-08907 DMG (KSx)

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a Party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this Action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a Party
12 to this Action but are retained to represent or advise a Party to this Action and have
13 appeared in this Action on behalf of that Party or are affiliated with a law firm which
14 has appeared on behalf of that Party (and their support staffs).

15 2.11 Party: any Party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
27 from a Producing Party.
28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations
11 imposed by this Order shall remain in effect until a Designating Party agrees
12 otherwise in writing or a court order otherwise directs. Final disposition shall be
13 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
14 or without prejudice; and (2) final judgment herein after the completion and
15 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
16 including the time limits for filing any motions or applications for extension of time
17 pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

20 Each Party or Non-Party that designates information or items for protection under
21 this Order must take care to limit any such designation to specific material that
22 qualifies under the appropriate standards. The Designating Party must designate for
23 protection only those parts of material, documents, items, or oral or written
24 communications that qualify so that other portions of the material, documents, items,
25 or communications for which protection is not warranted are not swept unjustifiably
26 within the ambit of this Order.

27 If it comes to a Designating Party's attention that information or items that it
28 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in
3 this Order (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (*e.g.*, paper or electronic
9 documents, but excluding transcripts of depositions or other pretrial or trial
10 proceedings), that the Producing Party affix at a minimum, the legend
11 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
12 contains protected material. If only a portion or portions of the material on a page
13 qualifies for protection, the Producing Party also must clearly identify the protected
14 portion(s) (*e.g.*, by making appropriate markings in the margins).

15 A Party or Non-Party that makes original documents available for inspection
16 need not designate them for protection until after the inspecting Party has indicated
17 which documents it would like copied and produced. During the inspection and
18 before the designation, all of the material made available for inspection shall be
19 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
20 it wants copied and produced, the Producing Party must determine which documents,
21 or portions thereof, qualify for protection under this Order. Then, before producing
22 the specified documents, the Producing Party must affix the “CONFIDENTIAL
23 legend” to each page that contains Protected Material. If only a portion or portions
24 of the material on a page qualifies for protection, the producing Party also must
25 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
26 margins).

27 (b) for testimony given or exhibits used in depositions or other
28 proceedings that the Designating Party notify opposing counsel on the record during

1 or within 14 days of the conclusion of the proceeding that the information provided
2 in the deposition or other proceeding (both testimony and exhibits) is considered
3 CONFIDENTIAL and that the transcript (or portions thereof) shall be subject to the
4 provisions of this Order.

5 (c) for information produced in some form other than documentary
6 and for any other tangible items, that the Producing Party affix in a prominent place
7 on the exterior of the container or containers in which the information is stored the
8 legend "CONFIDENTIAL." If only a portion or portions of the information warrants
9 protection, the Producing Party, to the extent practicable, shall identify the protected
10 portion(s).

11 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate
12 qualified information or items does not, standing alone, waive the Designating
13 Party's right to secure protection under this Order for such material. Upon correction
14 of a designation, the Receiving Party must make reasonable efforts to assure that the
15 material is treated in accordance with the provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court's
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37.1 et seq.

22 6.3 The burden of persuasion in any such challenge proceeding shall be on
23 the Designating Party. Frivolous challenges, and those made for an improper purpose
24 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
25 expose the Challenging Party to sanctions. Unless the Designating Party has waived
26 or withdrawn the confidentiality designation, all parties shall continue to afford the
27 material in question the level of protection to which it is entitled under the Producing
28 Party's designation until the Court rules on the challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 3 disclosed or produced by another Party or by a Non-Party in connection with this
 4 Action only for prosecuting, defending, or attempting to settle this Action. Such
 5 Protected Material may be disclosed only to the categories of persons and under the
 6 conditions described in his Order. When the Action has been terminated, a Receiving
 7 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a
 9 location and in a secure manner that ensures that access is limited to the persons
 10 authorized under this Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
 12 otherwise ordered by the court or permitted in writing by the Designating Party, a
 13 Receiving Party may disclose any information or item designated
 14 “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
 16 as employees of said Outside Counsel of Record to whom it is reasonably necessary
 17 to disclose the information for this Action;

18 (b) the officers, directors, and employees (including House Counsel) of the
 19 Receiving Party to whom disclosure is reasonably necessary for this Action;

20 (c) Experts (as defined in this Order) of the Receiving Party to whom
 21 disclosure is reasonably necessary for this Action and who have signed the
 22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff;

25 (f) professional jury or trial consultants, mock jurors, and Professional
 26 Vendors to whom disclosure is reasonably necessary for this Action and who have
 27 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

28 (g) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information;

2 (h) during their depositions, witnesses, and attorneys for witnesses, in the
 3 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
 4 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
 5 not be permitted to keep any confidential information unless they sign the
 6 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
 7 agreed by the Designating Party or ordered by the court. Pages of transcribed
 8 deposition testimony or exhibits to depositions that reveal Protected Material may be
 9 separately bound by the court reporter and may not be disclosed to anyone except as
 10 permitted under this Stipulated Protective Order; and

11 (i) any mediator or settlement officer, and their supporting personnel, mutually
 12 agreed upon by any of the parties engaged in settlement discussions.

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 14 IN OTHER LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation
 16 that compels disclosure of any information or items designated in this Action as
 17 “CONFIDENTIAL,” that Party must:

18 (a) promptly notify in writing the Designating Party. Such
 19 notification shall include a copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or
 21 order to issue in the other litigation that some or all of the material covered by the
 22 subpoena or order is subject to this Protective Order. Such notification shall include
 23 a copy of this Stipulated Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to be
 25 pursued by the Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served with
 27 the subpoena or court order shall not produce any information designated in this
 28 Action as “CONFIDENTIAL” before a determination by the court from which the

1 subpoena or order issued, unless the Party has obtained the Designating Party's
2 permission. The Designating Party shall bear the burden and expense of seeking
3 protection in that court of its confidential material and nothing in these provisions
4 should be construed as authorizing or encouraging a Receiving Party in this Action
5 to disobey a lawful directive from another court.

6 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
7 PRODUCED IN THIS LITIGATION

8 (a) The terms of this Order are applicable to information produced
9 by a Non-Party in this Action and designated as "CONFIDENTIAL." Such
10 information produced by Non-Parties in connection with this litigation is protected
11 by the remedies and relief provided by this Order. Nothing in these provisions should
12 be construed as prohibiting a Non-Party from seeking additional protections.

13 (b) In the event that a Party is required, by a valid discovery request,
14 to produce a Non-Party's confidential information in its possession, and the Party is
15 subject to an agreement with the Non-Party not to produce the Non-Party's
16 confidential information, then the Party shall:

17 (1) promptly notify in writing the Requesting Party and the Non-
18 Party that some or all of the information requested is subject to a confidentiality
19 agreement with a Non-Party;

20 (2) promptly provide the Non-Party with a copy of the Stipulated
21 Protective Order in this Action, the relevant discovery request(s), and a reasonably
22 specific description of the information requested; and

23 (3) make the information requested available for inspection by the
24 Non-Party, if requested.

25 (c) If the Non-Party fails to seek a protective order from this court
26 within 14 days of receiving the notice and accompanying information, the Receiving
27 Party may produce the Non-Party's confidential information responsive to the
28 discovery request. If the Non-Party timely seeks a protective order, the Receiving

1 Party shall not produce any information in its possession or control that is subject to
2 the confidentiality agreement with the Non-Party before a determination by the court.
3 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
4 of seeking protection in this court of its Protected Material.

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
9 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
10 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
11 persons to whom unauthorized disclosures were made of all the terms of this Order,
12 and (d) request such person or persons to execute the “Acknowledgment and
13 Agreement to Be Bound” that is attached hereto as Exhibit A.

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECTED MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery order that provides for production without prior
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
22 parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in the stipulated protective order submitted
25 to the court.

26 12. MISCELLANEOUS

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the
9 specific Protected Material at issue. If a Party's request to file Protected Material
10 under seal is denied by the court, then the Receiving Party may file the information
11 in the public record unless otherwise instructed by the court.

12 13. FINAL DISPOSITION

13 After the final disposition of this Action, as defined in paragraph 4, within 60
14 days of a written request by the Designating Party, each Receiving Party must return
15 all Protected Material to the Producing Party or destroy such material. As used in this
16 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
17 summaries, and any other format reproducing or capturing any of the Protected
18 Material. Whether the Protected Material is returned or destroyed, the Receiving
19 Party must submit a written certification to the Producing Party (and, if not the same
20 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
21 (by category, where appropriate) all the Protected Material that was returned or
22 destroyed and (2) affirms that the Receiving Party has not retained any copies,
23 abstracts, compilations, summaries, or any other format reproducing or capturing any
24 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
25 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
26 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
27 reports, attorney work product, and consultant and expert work product, even if such
28 materials contain Protected Material. Any such archival copies that contain or

1 constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 4 (DURATION).

3 14. VIOLATION

4 Any violation of this Order may be punished by any and all appropriate
5 measures including, without limitation, contempt proceedings and/or monetary
6 sanctions.

7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Dated: March 23, 2023

JONES DAY

2
3 By: /s/ Amanda C. Sommerfeld
4 Amanda C. Sommerfeld

5 Attorneys for DEFENDANTS

6 Dated: March 23, 2023

ALL BRIDGES LEGAL, P.C.

7
8 By: /s/ Daniel B. Swerdlin
9 Daniel B. Swerdlin

10 Attorneys for PLAINTIFF

11
12 **ORDER**

13
14
15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

16
17 Dated: March 23, 2023

18 Karen L. Stevenson
Karen L. Stevenson
Chief Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Central District of California on
 _____ [date] in the case of *Potts v. Sirius XM Radio Inc. et al.*, Case No. 2:22-
 cv-08907 DMG (KSx). I agree to comply with and to be bound by all the terms of
 this Stipulated Protective Order, and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order. I further agree to submit to the
 jurisdiction of the United States District Court for the Central District of California
 for the purpose of enforcing the terms of this Stipulated Protective Order, even if
 such enforcement proceedings occur after termination of this Action. I hereby
 appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this Action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____